

REMARKS

Claims 1-37 are pending in the application.

Claim Rejections – 35 U.S.C. 103(a)

Claims 1, 3-7, 9-15, 17-19, 28, 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,192,388 (***Cajole***) in view of US 7,590,746 (***Slater***) and further in view of Official Notice. Applicants respectfully traverse this rejection.

In the Final Office Action dated May 26, 2010 the Examiner argues that ***Slater*** does not check for operational capabilities, and thus ***Slater*** allegedly discloses the claim amendment regarding assigning a task without comparing operational capabilities. In the previous response to office action filed by Applicants, claim 1 was amended to recite, *inter alia*, assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication that the task is available for processing, and wherein assigning the task is performed without comparing operational capabilities of the at least two remote systems to each other. In the Final Office Action, the Examiner argues that the response time checked by the system of ***Slater*** “does not mean that the load balancer compares the system’s performance to assign task.” See “Response to Arguments” section, p. 2 of the Final Office Action dated 05/26/2010.

However, this assertion is contradicted by the disclosure of ***Slater***. For example, ***Slater*** clearly indicates its system provides software for controlling allocation of the request for a specific resource on the network of resource serves to a selected resource server, wherein the software includes a director adapted to direct the request to the selected server and wherein the director is adapted to receive a capacity input derived from an evaluation of capacities of each of the resource servers to serve out a specific resource. See ***Slater***, col. 11, lines 44-56. Moreover, ***Slater*** actually affirmatively indicates that the “director” is adapted to select the selected

resource server using the capacity input to establish that the server has capacity to serve out the specific resource. *Id.* This clearly indicates that **Slater** indeed checks the operational capabilities of the system, which is subject matter that is in direct contrast to the claims, and teaches away from the subject matter of the claims (as previously amended). This previous amendment includes the claimed feature that the assigning of the task is performed without comparing operational capabilities of the at least two remote systems to each other. Therefore, in contradiction to the Examiner's assertion in the Final Office Action, **Slater** indeed checks for the operational capabilities of the system when assigning resource tasks.

Moreover, the Examiner argued in the Final Office Action that since **Slater** indicates that the telecom factor far outweigh the operational capabilities of the system, **Slater** does not check for operational capabilities. Firstly, when evaluating **Slater** in full context, other portions of **Slater** clearly indicate that the operational capabilities are indeed checked by **Slater**. Secondly, the Examiner takes a portion of a sentence out of context to argue that the telecom factors far outweigh the operational capabilities, therefore, **Slater** must allegedly not check for operational capabilities. See "Response to Arguments" section, p. 2-3 of the Final Office Action dated 05/26/2010. This is simply not true when reading the sentence in its entirety. Read in proper context, the sentence cited by the Examiner actually reads that "...depending on whether the data connected to the web tier server has a dedicated IC (interface card) or not, the response time may be influenced slightly by how busy the CPU of the web tier server is, but telecom's factors far outweigh this usually." (Emphasis added), See column 1, lines 59-63. Therefore, it is clear that **Slater** indeed considers the response time to be indicative of operational capabilities, *i.e.*, whether the server has a dedicated IC or how busy the CPU of the web tier server is. Although **Slater** indicates that the telecom factors may outweigh this usually, it also discloses that that is

not always the case. Further, as described above, and provided below, **Slater** indeed examines the operational capabilities.

Further, Applicants are frankly perplexed by the Examiner's arguments in the Final Office Action since the Examiner had indicated in a previous Examiner Interview that **Slater** indeed takes into account the operational capabilities of remote servers. The Examiner also indicated that and an amendment that would indicate that the claims call for assigning a task without comparing operational capabilities, would overcome the cited prior art, including **Slater**. Nevertheless, as described herein, based upon the disclosure of **Slater**, which the Examiner uses to argue that the operational characteristic is not examined by the prior art, **Slater's** disclosure is indicative to the contrary. And since it was previously admitted other prior references do not teach or suggest these features, all of the elements of claim 1.

Previously, claim 1 was amended to recite, *inter alia*, assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication that the task is available for processing, and wherein assigning the task is performed without comparing operational capabilities of the at least two remote systems to each other. Exemplary support for this amendment is found in the Specification at page 3, line 17 through page 4, line 18:

“In some systems, clients may delegate tasks to the volunteer machines using a simplistic circular, round-robin scheme. In other systems, a client gathers information about the operational capabilities (e.g., processor speed, availability) of the various volunteer machines, and then assigns the tasks to the volunteer machines based on the operational capability of the volunteer machine. **Each of these schemes, however, has its drawbacks.**” (*emphasis added*).

“[S]chemes in which the client first gathers information about the various volunteer machines before work is assigned also tend to be inefficient and inflexible. This is because the client machine (or another machine that is designated to gather the information) is constantly burdened with the responsibility of ascertaining the operational capabilities of the various volunteer machines on the network and then ensuring that these operational capabilities are up-to-date. Constantly maintaining an up-to-date list of the various volunteer

machines can be inefficient, particularly if some of those volunteer machines are rarely or never utilized.” (*emphasis added*).

Applicants respectfully assert that **Cajolet**, **Slater** and/or their combination fail to teach, among other things, assigning a task from a task list to a remote system without comparing operational capabilities of the at least two remote systems to each other.

In an Examiner’s Interview conducted on December 3, 2009, Applicants’ representatives and the Examiner discussed possible amendments to the claims to overcome the cited prior art. (See Examiner’s Interview Summary on page 2 of Applicants’ Response dated December 7, 2009). During the December 7th Interview, the Examiner and Applicants’ representatives agreed that the claimed feature of “assigning the task is performed without comparing physical attributes of the at least two remote systems to each other” was not taught by **Cajolet** and/or **Bantz**, alone or in combination. Subsequent to the current Office Action, Applicants have amended claim 1 to recite “without comparing operational capabilities.”

Applicants respectfully submit that **Cajolet** and/or **Slater**, alone or in combination, fail to teach this claimed feature, as amended. In the current Office Action, the Examiner admits that **Cajolet** does not teach this claimed feature. *See* Office Action, p.5. The Examiner, however, argues that **Slater** teaches this claimed feature because **Slater** allegedly discloses a load balancing technique for assigning a request service to a server which replies fastest to an investigatory signal. *See* Office Action, p.5. **Slater** teaches a load-balancing technique which inherently considers operational capabilities of the web tier servers. In other words, the load of the server is a measure of its current operational capabilities. Additionally, **Slater** discloses that the primary factor in determining if a server has a fast response time is “whether the data content web tier server has a dedicated IC (interface card) or not.” *See* **Slater**, col. 1, lines 55-63. Clearly this demonstrates that **Slater** relies upon a server’s operational capabilities in

determining which server has the fastest response time. In contrast, claim 1 recites “assigning a task from a task list to a remote system without comparing operational capabilities of the at least two remote systems to each other.” As such, Applicants respectfully submit that **Slater** does not, and cannot teach this claimed feature. As previously mentioned, the Examiner has admitted that **Cajolet** also does not teach this claimed feature.

Claim 1 also recites “assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication.” In the Office Action, the Examiner admits that **Cajolet** does not teach this claimed feature. See Office Action, page 5. The Examiner, however, argues that **Slater** teaches this claimed feature because **Slater** allegedly discloses a load balancing technique for assigning a request service to a server which replies fastest to an investigatory signal. See Office Action, p.5. **Slater** teaches a load-balancing technique employed by a director server which waits for replies from web tier servers. See **Slater**, col. 1, lines 50-55. **Slater** describes how the director servers use this technique for “measuring response time.” See *id.* at lines 55-56. In other words, **Slater** does not determine which web tier server is the first to respond. Rather **Slater** teaches that the web tier server measures response time, or, put another way, **Slater** measures the time from the sending of the investigatory signal until the receipt of the web tier server response. In contrast, claim 1 calls for “assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication.” As such, **Slater** does not, and cannot, teach this claimed feature, and **Cajolet**, as admitted by the Examiner, fails to remedy the fundamental deficiencies of **Slater**.

Applicants respectfully submit that for at least this reason, as well as arguments presented during the course of this prosecution, claim 1 is allowable. For at least these reasons, the claim 1

dependent claims [2-9] are allowable. For at least similar reasons, claims 10, 18, 19, 29, 32 and 35 (and their respective dependent claims) are also allowable.

Regarding the Examiner's comments in the Final Office Action with respect to **35 USC 112, first paragraph**, the Examiner indicated that Applicants allegedly argue that there is a time stamp in the response. Applicants note the Final Office Action does not contain a rejection under 35 U.S.C. 112. Contrary to the Examiner's position in the Final Office Action, Applicants respectfully assert that Applicants have not made the statement that there is a time stamp in the response but have indicated that the assignment of a task to a remote system may be made on the remote system that responded first to the indication that the task is available for processing. This is clearly supported by the Specification. *See*, for example, paragraph [0047]. Paragraph [0047] indicates that, in one embodiment, the delegating module may select a remote system based on the order in which the responses were received. *i.e.*, first come, first serve basis. Therefore, the Examiner's interpretation with regard to the first system to generate a response being interpreted as the first system to have a response received is not relevant to the issue at hand. This is particularly true the claims actually call for assigning the task from the task list to a remote system based upon the remote system that response first received indication that the task is available. This feature is clearly supported by the Specification and no further interpretation, such as the one made in the Final Office Action (see p. 2) need be made. Since proper support can be found for the claim, the discussion regarding 35 USC 112, first paragraph, is moot.

The Examiner rejected claims 2, 8, 16, 20-27, 30 and 32-37 under 35 U.S.C. §103(a) as being unpatentable over *Cajolet* in view of *Slater* and further in view of some combination of US 2007/0011226 (*Hinni*), US 2002/0087612 (*Harper*), US 2002/0007389 (*Jones*) and *ON*. Applicants respectfully traverse this rejection.

While the Examiner has rejected the remaining claims [2, 8, 16, 20-27, 30 and 32-37] over *Cajolet* and *Slater* in view of various and sundry references, Applicants respectfully submit that the independent claims 1, 10, 18, 19, 29, 32 and 35, as shown above, are allowable over *Cajolet* and *Slater*. Therefore, the remaining claims are also allowable for at least this reason.

Reconsideration of the present application is respectfully requested.

In light of the arguments presented above, a Notice of Allowance is respectfully solicited. If for any reason the Examiner finds the application other than in condition for allowance, **the Examiner is requested to call the undersigned attorney** at the Houston, Texas telephone number (713) 934-4069 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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